

General Information Letter: Tax treatment of repayment of incentive compensation received in an earlier year is governed by the Internal Revenue Code.

May 10, 2001

Dear:

This is in response to your letter of April 3, 2001 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (2 Ill. Adm. Code 1200). These rules can be obtained from the Department's website, which can be accessed at www.revenue.state.il.us. We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

I work as a field service technician for xxxxxxxxxxxxxxxxxxxxxxxxx in xxxxxxxxxxxxxxxx, IL. As part of my position I occasionally turn in leads to the sales department for possible sale of a new copier. If the lead turns into a sale for the sales person, I receive a "spiff" of a monetary incentive for my part in helping out the sales person. This money is included on my paycheck and income taxes are paid.

Recently, the company has decided that if the customer is not happy with their new copier, they will take back the "spiff" that I was paid and will deduct it from my paycheck.

This money that I was paid was included on my W2 form and was counted as income on my tax return.

My question to you is "Will this effect my tax return that I filed for the previous year?"

DISCUSSION

The answer to your question is based upon federal law. Accordingly, you must contact the Internal Revenue Service to determine how they wish you to handle the situation. However, from your letter it would seem that there would be no effect on your prior year returns. The reason is that your employer is apparently subtracting the "spiff" from your *current* paycheck rather than retroactively deducting it from your prior year's wages. As you are most likely a calendar year taxpayer the current reduction in wages would simply reduce the stated income on this year's W-2. This would reduce your current year's income and thus your current year's income taxes. But you must check with the IRS to see if they think this is appropriate. If the IRS wishes you to handle the situation differently, and you thus make changes to previously filed federal returns, you must likewise change your previously filed Illinois income tax returns. Section 506 of the Illinois Income Tax Act sets forth the rule when a change occurs to a federal return. The section states in part:

- (b) Changes affecting federal income tax. In the event the taxable income, any item of income or deduction, the income tax liability, or any tax credit reported in a federal income tax

return of any person for any year is altered by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a change or settlement with respect to any item or items, affecting the computation of such person's net income, net loss, or of any credit provided by Article 2 of for any year under this Act, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code, such person shall notify the Department of such alteration. Such notification shall be in the form of an amended return or such other form as the Department may by regulations prescribe, shall contain the person's name and address and such other information as the Department may by regulations prescribe, shall be signed by such person or his duly authorized representative, and shall be filed not later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, tentative carryback adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur. (Source: P.A. 86-905; PA 90-491, eff. 1-1-98.)

I hope this answers your question as regards the effect of your employers change on your Illinois income tax filings.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian
Associate Counsel - Income Tax Division